

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA : NO. 97-11,916

VS. :
: :
: :
KEVIN L. BEATTY :

OPINION AND ORDER

Before the Court are the Defendant's Post Sentence Motion in Arrest of Judgment and Motion for a New Trial. The Defendant's Motion in Arrest of Judgment alleges that the Court erred in denying his Motion to Dismiss the charges under Pa. R. Crim. P. 1100. Specifically, the Defendant alleges that the Court erred in excluding all of the time between the filing of his pre-trial Motion in Limine and its disposition. The Defendant argues that the Commonwealth lacked due diligence in meeting the Defendant's Motion in Limine. The Defendant cites Commonwealth v. Hill, 736 A.2d 578 (Pa. 1999) in support of his position that the mere filing a pretrial motion did not render him automatically unavailable for trial. In order to establish that a delay is excludable, the Commonwealth must demonstrate by a preponderance of the evidence that it exercised due diligence in opposing or responding to the motion. Hill, 736 A.2d at 587. A delay caused by the Commonwealth's lack of due diligence will not constitute excludable time.

The Defendant argues that the Court erred in excluding the entire time between the filing of his pre-trial motion in limine and its disposition (August 17, 1998 – November 9, 1998), as the Commonwealth requested a continuance from October 12,

1998 to the date of the hearing on October 29, 1998. The Defendant argues that under Hill, this delay caused by the Commonwealth should not be attributable to the Defendant unless it is shown that the Commonwealth acted with due diligence in opposing the Defendant's motion.

Instantly, the Court finds that the Commonwealth exercised due diligence in opposing the Defendant's Motion in Limine. It appears to the Court that the continuance requested by the Commonwealth on October 12, 1998 was not because the Commonwealth was unprepared to proceed to trial, but was because the Defendant's motion was still outstanding. This is evident from the Court's Order dated October 12, 1998 that orders the Court Scheduling Technician to schedule a hearing prior to the next trial term in order to resolve the outstanding issue. It appears that the Defendant's oral motion made at the August pre-trials did not initially receive a hearing date. At the October pre-trials it was discovered that it had not been set for a hearing, and was promptly scheduled for a hearing. The Court further notes that if the motion had been properly filed by defense counsel under Lycoming County Rule L309, it would have been channeled through the appropriate offices and would have been assigned a hearing date at that time.

The Court additionally noted in the original Opinion with regard to this issue that it would find that the Commonwealth acted with due diligence in bringing this case to trial, and the delays that resulted were beyond the control of the Commonwealth. The Court's Opinion in this regard remains unchanged. The Defendant's Motion in Arrest of Judgement is therefore denied.

The Defendant next argues that he should be granted a new trial because the Court erred in granting the Commonwealth's motion to reconsider and in allowing the blood test results into evidence at the Defendant's trial in this case. The Court's Opinion with regard to this issue dated January 15, 1999, remains unchanged. The Defendant's motion for a new trial is therefore denied.

ORDER

AND NOW, this _____ day of December, 1999, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Post Sentence Motion in Arrest of Judgement and Motion for a New Trial are DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire
Diane Turner, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire